UNITED STATES GOVERNMENT

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SUTTER MEDICAL CENTER OF SANTA ROSA AND
SUTTER WARRACK HOSPITAL

Employer

and

Cases 20-RC-17975
20-RD-2396

MARGO MILES, An Individual

Petitioner

and

SUTTER SANTA ROSA/SUTTER WARRACK R.N.
ASSOCIATION,

Union-Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 707, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

2. The parties stipulated, and I find, that the Employer operates two acute care hospital facilities located in Santa Rosa, California.[2] The parties further stipulated, and I find, that during the calendar year ending December 31, 2003, the Employer derived gross revenues in excess of $250,000 and received goods and services valued in excess of $50,000 directly from sources located outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is a health care institution within the meaning of Section 2(14) of the Act. I also find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

3. The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of the Act.

The Intervenor contends that the Union-Petitioner is not a labor organization within the meaning of Section 2(5) of the Act because it does not intend to represent the Employer's registered nurses (RNs), if certified by the Board, but instead is merely

[1] The Hearing Officer refused to allow the Intervenor's attorney to cross-examine the president of the Union-Petitioner regarding the Intervenor's contention that the Union-Petitioner intends to affiliate with the California Nurses Association. The Hearing Officer allowed the Intervenor to make an offer of proof about this issue and placed exhibits offered by the Intervenor regarding it in the Rejected Exhibits file. I find that the Hearing Officer's rulings in this regard do not constitute prejudicial error for the reasons discussed below.

[2] The parties stipulated, and I find, that the Employer operates two acute care hospital facilities located in Santa Rosa, California, Sutter Medical Center of Santa Rosa (herein called Sutter Medical Center) and Sutter Warrack Hospital (herein called Sutter Warrack), which are the work locations of the employees in the existing contractual unit and in the petitioned for unit in this case. I take administrative notice that Sutter Medical Center is located at 3325 Chanate Road and Sutter Warrack Hospital is located at 2449 Summerfield Road, and that the two facilities are 4.4 miles apart.

serving as a "stalking horse" for the California Nurses Association (the C.N.A.), which will actually be the entity that will represent the RNs should the Union-Petitioner be certified. For the reasons discussed below, I find that the Union-Petitioner is a labor organization within the meaning of the Act.

Testimony regarding the Union-Petitioner 's status as a labor organization within the meaning of the Act was given at the hearing by the Union-Petitioner 's President, Pamela Bacigalupi, who is employed by the Employer as a staff nurse III. Bacigalupi testified that RNs employed by the Employer first met to form the Union-Petitioner after the negotiation of the current collective-bargaining agreement (the Agreement) between the Employer and the Intervenor. As discussed more fully below, the Agreement is effective by its terms for the period from February 18, 2002, to and including October 31, 2004, and covers RNs and other professional employees in a unit that also includes nonprofessional employees employed by the Employer at both of its Santa Rosa facilities. The record reflects that the Union-Petitioner held four organizational meetings in calendar year 2004, which were publicized by leaflets circulated at the Employer's facilities. According to Bacigalupi, these meetings were attended by RNs employed by the Employer who were given the opportunity to pay dues and join the Union-Petitioner. At the most recent meeting, held on about August 12, 2004, the RNs in attendance voted to elect temporary officers for the Union-Petitioner (i.e., president, vice president and secretary/treasurer) and discussed the dues structure for the organization. Bacigalupi testified that the Union-Petitioner was established to represent RNs, and that as its president, she anticipated negotiating an agreement with the Employer, covering the wages, hours and working conditions of the RNs. According to Bacigalupi, the

Employer's RNs have issues which are unique to their job classification, such as patient-to-nurse ratios and floating policies.

Analysis. Section 2(5) of the Act provides the following definition of "labor organization:"

> Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

As the Board observed in *In re Coinmach Laundry Corp*., 337 NLRB 1286, 1286, (2002), under this definition, an incipient union which is not yet actually representing employees may, nevertheless, be accorded Section 2(5) status if it admits employees to membership and was formed for the purpose of representing them. See *Butler Mfg. Co.*, 167 NLRB 308 (1967); see also *East Dayton Tool & Die Co*., 194 NLRB 266 (1971). Even if such a labor organization becomes inactive without ever having represented employees, it is deemed to be a statutory labor organization if its organizational attempts "[c]learly . . . envisaged participation by employees," and if it existed "for the statutory purposes although they never came to fruition." *Comet Rice Mills*, 195 NLRB 671, 674 (1972). Moreover, "structural formalities are not prerequisites to labor organization status." *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, bylaws, meetings or filings with the Department of Labor); see *Betances Health Unit*, 283 NLRB 369, 375 (1987) (no formal structure and no documents filed with the Department of Labor); *Butler Mfg Co*., 167 NLRB at 308 (no constitution, bylaws, dues, or initiation fees); *East Dayton*, 194 NLRB at 266 (no constitution or officers).

In sum, all that is required in order for an entity to be a labor organization under Section 2(5) of the Act are two things: first, the organization must be one in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Mfg. Corp.*136 NLRB 850, 851-852 (1962). Bacigalupi's testimony establishes that the Union-Petitioner has fulfilled these requirements and is a labor organization within the meaning of the Act.

Allegations, such as those raised by the Intervenor, that a petitioning organization intends to affiliate with another labor organization and/or not to fulfill its bargaining obligation, if certified, but instead to affiliate with another labor organization immediately after certification, are considered by the Board to be prematurely raised in pre-election proceedings. See *Butler Mfg. Co.*, 167 NLRB 308; *Guardian Container Co.*, 174 NLRB 34 (1969). Thus, as stated by the Board in *Butler*:

> ". . . it would be premature and inappropriate at this time to consider the possibility suggested by the Intervenor that this still uncertified independent union would affiliate with another labor organization if it should win an election. Correlative to the Board's power to certify labor organizations pursuant to Section 9(c) of the Act is its authority to police its certification. [footnote omitted]. Further, if after certification there is a movement for affiliation with another labor organization, the Board has provided procedures through which to test the propriety of such an affiliation. [footnote omitted]

Therefore, I reject the Intervenor's contention that the Union-Petitioner is not a labor organization because it intends to turn representation of the RNs over to the C.N.A.

if it is certified.[3] Accordingly, I find that the Union-Petitioner is a labor organization under the Act.

4. By the petition in Case 20-RD-2396, Petitioner Miles seeks an election in a unit of RNs covered under the Agreement to allow the RNs to vote whether they desire to continue to be represented as part of the current contractual unit that includes other non-RN professional and nonprofessional employees or whether they wish to be severed from the unit under the current Agreement between the Intervenor and the Employer. By the petition in Case 20-RC-17975, the Union-Petitioner seeks to represent the RNs in a separate unit. The Union-Petitioner's counsel has represented that if the Board will allow the Union-Petitioner to process its petition in Case 20-RC-17975 to represent the RNs without requiring a decertification proceeding, the Union-Petitioner will cause the petition in Case 20-RD-2396 to be withdrawn. As discussed below, the record reflects that there is a single historical nonconforming contractual unit, which at present includes approximately 430 RNs, approximately 220 other non-RN professional employees, and approximately 283 nonprofessional employees working at the Employer's two Santa Rosa facilities. This unit is currently covered under the Agreement between the Employer and the Intervenor, which expires on October 31, 2004. The record reflects that the Employer's RNs and other professional employees have never been given the opportunity to vote as to whether they desire to be included in this contractual unit with nonprofessional employees.

[3] I further note that an exclusive bargaining representative is empowered to designate and authorize agents, including other labor organizations, to act on its behalf. See *CCI Construction Co., Inc.*, 326 NLRB 1319 (1998); see also *Minnesota Mining and Manufacturing Company*, 144 NLRB 419 (1963).

The Intervenor contends that both petitions in this case should be dismissed, asserting that both petitions are barred by the existing Agreement and that a decertification election can only be conducted in the existing contractual unit. In the alternative, the Intervenor argues that if an election is to be conducted in a unit smaller than the existing contractual unit, it must be conducted in a unit comprised of all professional employees covered under the Agreement, and not just a unit of RNs.

For the reasons discussed below, I find that the RD and RC petitions herein are not barred by the Agreement and that a question concerning representation is raised in both cases. I find that the RNs may vote in Case 20-RD-2396, whether they desire to continue to be represented as part of the current contractual unit or whether they wish to be severed from this unit. Further, if they do desire to be severed from the current contractual unit, they may vote in Case 20-RC-17975 whether they desire to be separately represented, by the Intervenor, by Union-Petitioner, or by no union.[4]

The Employer's Operation & the Current Unit. As noted above, the Employer operates two acute care hospitals in Santa Rosa, California, which are about four miles apart. Under the current collective-bargaining agreement between the Employer and the Intervenor, the Intervenor represents about 933 employees at these two hospitals, including approximately 430 RNs, 220 other professional non-RN employees and 283 nonprofessional employees. By the terms of the Agreement, the Employer recognizes the Intervenor as the exclusive bargaining representative for all full-time, part-time and per

[4] In this regard, I find that both the RD and RC petitions are necessary to reach this result but that both petitions can be processed in a consolidated proceeding in order to allow the RNs to vote in a single election whether they desire to continue to be represented by Intervenor in the contractual unit that includes nonprofessionals and also to vote whether they desire the Union-Petitioner or the Intervenor to represent them in a separate unit comprised only of RNs.

diem employees in the "Clerical, Service and Technical Support and Nursing Services Non-Supervisory Units." Although the Agreement uses the term "unit" to refer to these contractual groupings of employees, and I make use of the word "unit" to refer to these groupings herein, the record shows that there has never been an election conducted in a unit of RNs or in any unit of professional employees, wherein they were given the opportunity to vote as to whether they desired to be represented in a unit with nonprofessional employees. Nor is there any evidence that an election has ever been conducted in an overall unit or among any employee groupings in that unit designating the Intervenor as the exclusive collective-bargaining representative of the employees covered under the Agreement.

The record reflects that the unit covered under the Agreement includes 76 classifications, including 47 classifications in the nursing services unit, [5] 20 classifications in the clerical unit, [6] and nine classifications in the service and technical

[5] The nursing services unit includes employees in the following 47 classifications: anat path asst/lab asst III, anesthesia technician, angiography tech I, angiography tech II, clinical social worker II, clinical support assoc I, clinical support assoc II, community resource coord, CT technologist (with license), emergency dept technician, fam nurse practitioner (cont/ucp), fam nurse prct (BS&MS-cont/ucp), laboratory assistant I, laboratory assistant II, licensed voc nurse I, licensed voc nurse II, licensed voc nurse III, mammography tech, medical assistant, MRI Tech I, MRI tech II (with license), nuclear medicine tech I, nuclear medicine tech II, nursing assistant (certified), nursing assistant (non-certified), obstetrics technician, orthopedic tech, paramedic, phys asst (cont & ucp), physician assistant (hired after 1-7-02), radiologic assistant, radiologic technologist I, radiologic technologist II, rehabilitation technician, respiratory specialist, respiratory therapist I, respiratory therapist II, staff nurse I, staff nurse II, staff nurse II-BS, staff nurse II-M.S., staff nurse III, surgery tech I, surgery tech II, telemetry technician, ultrasound tech I and ultrasound tech II.

[6] The clerical unit includes employees in the following nineteen classifications: account clerk II, clerk typist II, clerk typist III, clinic associate, concierge, diet clerk, financial counselor, HIS associate I, HIS associate II, HIS associate III, HIS coder I, HIS coder II, HIS coder III, HIS tech, medical library tech, medical receptionist, medical staff secretary, medical transcriptionist, secretary and telephone operator.

bargaining unit.[7] Seven of the classifications in the nursing services unit require an RN license.[8] Twenty-eight of the remaining forty classifications in the nursing services unit do not require an RN license but do require advanced learning degrees and training.[9] Nine of the other non-RN classifications in the nursing services require no certifications or advanced degrees or training.[10] The record does not disclose whether three remaining non-RN positions in the nursing services unit (surgery tech I, surgery tech II, and orthopedic tech) require an advanced degree or training. The record reflects that the only professional employees covered under the Agreement are those included in the nursing services unit. The parties stipulated that the RNs are professional employees within the meaning of the Act. No professional employees are employed in the clerical or service and technical support units.

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[7] The service and technical bargaining unit includes employees in the following nine classifications: central service tech I, central service tech II, computer support tech, cook, materials handler, nutrition service aide, pharmacy technician, service assistant, and storekeeper.

[8] The seven classifications in the nursing services unit, which require RN licensure are staff nurse I, staff nurse II, staff nurse II-BS, staff nurse II-M.S., staff nurse III, fam nurse practitioner (cont/ucp) and fam nurse prct (BS&MS-cont/ucp).

[9] The twenty-eight non-RN employee classifications in the nursing services, which require advanced degrees or certifications, include: anesthesia technician, angiography tech I, angiography tech II, clinical social worker II, CT technologist (with license), emergency dept technician, licensed voc nurse I, licensed voc nurse II, licensed voc nurse III, mammography tech, medical assistant, MRI tech I, MRI tech II (with license), nuclear medicine tech I, nuclear medicine tech II, nursing assistant (certified), obstetrics technician, paramedic, phys asst (cont & ucp), physician assistant (hired after 1-7-02), radiologic technologist I, radiologic technologist II, respiratory specialist, respiratory therapist I, respiratory therapist II, telemetry technician, ultrasound tech I and ultrasound tech II. As noted above, the record reflects that there are no professional employees covered under the Agreement in the clerical unit or service and technical support unit; the only professional employees are included in the nursing unit.

[10] The nine classifications in the nursing services unit, which require no advanced degree or nursing license, include: anat path asst/lab asst III, clinical support assoc I, clinical support assoc II, community resource coord, laboratory assistant I, laboratory assistant II, nursing assistant (non-certified), radiologic assistant and rehabilitation technician.

New Classifications. The Employer's Administrative Director of Human Resources, Susan Kathleen Vichon, testified regarding the classifications covered in the nursing services unit set forth in the Agreement. According to Vichon, except for a few classifications created by the Employer after the Agreement was implemented, the 47 classifications covered by the Agreement represent all of the nursing unit classifications. With regard to the newly created classifications, Vichon testified that there are about six or seven such positions, and she specifically identified five of these, including the OR assistant, utilization coordinator, pharmacy inventory tech coordinator, clinical educator and maternal child discharge coordinator. According to Vichon, these new classifications resulted from impact bargaining or the redesign of certain departments and were not specifically placed in a bargaining unit covered under the Agreement. Vichon testified that a couple of these positions may require an RN license, but the record does not indicate which positions have such a requirement. Vichon further testified that the positions of maternal child discharge coordinator and utilization coordinator require advanced degrees or certifications; the pharmacy tech position requires a certification; and the positions of maternal child discharge coordinator, utilization coordinator and admissions coordinator require the exercise of independent judgment. The record does not clearly disclose how many employees occupy these newly created positions or whether the Employer and the Intervenor have applied the terms of the Agreement to employees in these classification or currently consider them covered under the Agreement.

Collective Bargaining History. The record reflects that the Intervenor, under its former name, Sonoma County Organization of Public Employees (SCOPE), represented

only public employees. Beginning in the 1960s, SCOPE had a collective-bargaining agreement with the County of Sonoma (the County), which covered employees working at the Employer's predecessor, Community Hospital, which was at that time owned and operated by the County. From about the 1960s until 1996, SCOPE represented the employees of Community Hospital, including the RNs, in a single unit that included both professional and nonprofessional employees in five different units, along with non-hospital employees of the County. As noted above, the record reflects that the professional employees, including the RNs, were not given the opportunity to vote as to whether they desired to be represented by SCOPE in the unit with nonprofessional employees.

Between approximately 1982 and 1984, the Intervenor began representing employees of private employers as well as public employers, and in 1996, the Employer became the employer of the employees of Community Hospital. The record includes a document titled "Recognition Agreement," between Sutter Sonoma Medical Center, Inc. d/b/a Community Hospital and the Intervenor. There is no dispute that Sutter Sonoma Medical Center, Inc., d/b/a Community Hospital is the predecessor of the Employer in this case. In the Recognition Agreement, dated March 22, 1996, the Employer agreed to recognize the Intervenor as the collective-bargaining representative of the bargaining unit comprised of the positions included in Attachment A to the Recognition Agreement. Attachment A included listings of employees in the categories of clerical, service and technical, maintenance, social services and nursing services. The Recognition Agreement served as a transitional agreement, setting forth terms and conditions of employment of employees of the Employer, until a collective-bargaining agreement

could be negotiated between the Employer and the Intervenor. The parties also agreed, as part of the Recognition Agreement, that to the extent they disagreed about whether to include the positions of nursing staffing coordinator, supervising staff nurse and supervising respiratory therapist**,** they would file a unit clarification petition to resolve such issues. The record shows that the parties ultimately agreed to exclude these three classifications as supervisory and that they are not covered under the current Agreement.

The record shows that after the Recognition Agreement was entered into in 1996, the parties entered into two collective-bargaining agreements, the first of which was effective for the period from October 28, 1998, through October 31, 2001, and the second of which is the current agreement, which is effective until October 31, 2004. The record reflects that representatives of all of the units listed in the Recognition Agreement participated in negotiations in 1998. As a result of those negotiations, the employee groupings or units covered by the 1998-2001 contract were reduced in number from five to three. Employees in all three groupings (i.e., nursing services, clerical and technical support) ratified the 1998-2001 contract and the current Agreement as a single group. As indicated above, the record reflects that the classifications set forth in the Agreement comprise all but a few classifications that have been newly created by the Employer or were excluded by the parties as supervisory. Negotiations for a third collective-bargaining agreement began about one to two months prior to the hearing in this case. A representative of the Intervenor is negotiating the new agreement along with an employee bargaining committee comprised of approximately sixteen employees representing employees in all three of the units covered under the Agreement.

Analysis. As indicated above, the Intervenor contends that under the Board's contract bar rules, the petitions in this proceeding are barred by the Agreement. However, the record establishes that the petitions in this case were each filed on August 2, 2004. This date which is within the sixty to ninety day insulated period preceding the expiration date of the Agreement, October 31, 2004, for the filing of such petitions. In these circumstances, I find that the petitions were timely filed and there is no contract bar to this proceeding. See *Bob's Big Boy Family Restaurants v. N.L.R.B*, 625 F.2d 850 (1980); *Brown Co. (KVP Div.)*, 178 NLRB 57 (1969); *Deluxe Metal Furniture Company*, 121 NLRB 995, (1958) and reaffirmed in *Leonard Wholesale Meats, Inc*., 136 NLRB 1000 (1962).

As noted above, the Intervenor contends that the decertification election petitioned for herein can only be conducted in the existing contractual unit or, in the alternative, that if it is to be conducted in a unit smaller than the contractual unit, it must be conducted in a unit that consists of all of the Employer's professional employees and not just RNs. The Union-Petitioner takes the position that under *Utah Power & Light*, 258 NLRB 1059 (1981), the RNs, as professional employees, should be allowed to vote in a self-determination election to decide if they wish to be represented as part of a separate unit. Thus, the Union-Petitioner argues that since the Board's Health Care Rule provides that a unit of RNs is one of the eight appropriate units, the appropriate voting unit for purposes of a decertification election can be limited to only RNs and need not include all professional employees.

For the following reasons, I find that the RNs are entitled to vote as a separate voting group in Case 20-RD-2396, as to whether they wish to be represented in the unit

covered by the Agreement or whether they wish to be severed from that unit. I further find, that if the RNs vote to be severed from the contractual unit, they may then vote in Case 20-RC-17975, whether they wish to be represented by the Union-Petitioner, by Intervenor or by no union in a separate unit of RNs.

With regard to the Intervenor's contention that any decertification election conducted in this case must be held in a unit coextensive with the existing bargaining unit, the principle relied on by Intervenor is a well-established one under Board law; that is, the Board has long held that decertification elections must be conducted in units coextensive with existing or recognized units. *Green-Wood Cemetery*, 280 NLRB 1359 (1986); *Campbell Soup Co*., 111 NLRB 234 (1955). However, there is one exception to this rule and it is one applicable to this case. That is, the Board in *Utah Power & Light Co*., 258 NLRB 1059 (1981), ruled that a decertification election may be conducted in a unit that is not coextensive with the existing or recognized unit where the decertification petition is filed by professional employees under Section 2(12) of the Act, who have never had the opportunity to vote whether they desired to be included in the existing or contractual unit with nonprofessional employees. In *Utah Power*, the Board ruled that in such cases, the professional employees are to be given the opportunity to vote in a self-determination election following the procedures of *Sonotone Corp*., 90 NLRB 1236 (1950), to determine whether they wish to be represented in the same unit with nonprofessionals. *Utah Power & Light Co*., 258 NLRB 1059; *Group Health Association* 317 NLTB 238 n. 3 (1995).[11]

[11] Specifically, in *Utah Power & Light*, the Board ruled that a decertification election could be held in a unit of the Employer's engineers, who were professional employees, to allow them to vote as to

It is well established that RNs are professional employees within the meaning of the Act, and the parties herein have stipulated to their status as such.[12] Further, RNs are one of the eight appropriate units found by the Board in its final Health Care Rule for acute care hospitals.[13] Thus, the Board's Health Care Rule states that a unit of all RNs is the only appropriate unit for petitions filed under Section 9(a)(1)(A)(i) and 9(c)(l)(B) of the Act, as are units comprised of (2) all physicians and (3) all professionals, except for registered nurses and physicians. Given that in *Utah Power & Light*, the Board made an exception to the well-established policy decertification elections must be conducted in units that are coextensive with the existing unit, and that under the Board's Health Care Rule, RNs are established as one of the eight appropriate units separate and apart from other professional employees, I find that the instant decertification election is properly directed in a voting group comprised only of the RNs covered under the Agreement.

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whether they desired to be represented in a unit that included them with nonprofessional production and maintenance employees. In that case, the Board stated that there were no professionals in the existing unit who were not included in the unit sought by the petitioner.

[12] See the Board's discussion regarding RNs in its Health Care Rule at 284 NLRB 1528, 1543-1552 (1988).

[13] The Health Care Rule provides as follows:

> Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) ... except that, if sought by labor organizations, various combinations of units may also be appropriate:
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> (1) All registered nurses.
> (2) All physicians.
> (3) All professionals except for registered nurses and physicians.
> (4) All technical employees.
> (5) All skilled maintenance employees.
> (6) All business office clerical employees.
> (7) All guards.
> (8) All non-professional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

53 FR 33900 (1988) reprinted at 284 NLRB 1528, 1543-1552, and final rule 54 FR 16336 (1989), reprinted at 284 NLRB 1580 and codified in Section 103.30(a) of the Board's Rules and Regulations, 29 C.F.R. § 103.30(a); *St. Mary's Duluth Clinic Health System*, 332 NLRB 1419 at fn. 4 (2000).

There is no basis for directing this decertification election in a voting group that includes the RNs with all of the other professional employees in the existing contractual unit. For the reasons discussed by the Board in its Notice of Proposed Rulemaking, 284 NLRB at 1547, RNs have interests that are markedly different from those of other healthcare professionals and doctors. These differences caused the Board to establish units of RNs as separate appropriate units from units of all other professionals and units of doctors at acute care hospital facilities such as those involved in the instant case. To give RNs the right to vote as to whether they wish to sever themselves from a unit that includes nonprofessional employees under *Utah Power*, but to make this right contingent on their doing so as part of a voting unit that combines them with other professional employees, would effectively deny them the right to self-determination, just as would forcing other non-RN professionals and/or doctors to vote in a voting group with RNs. Thus, given that RNs are an established appropriate unit in acute care hospitals, I find that the RNs covered under the Agreement are entitled to vote as a separate voting group in a decertification proceeding as to whether they wish to continue to be represented as part of the existing unit under the Agreement or whether they desire to be severed from the existing contractual unit. See *Group Health Association*, 317 NLRB 238, 244 n. 21 (1995). If the RNs vote to sever their group from the unit covered under the Agreement in Case 20-RD-2396, then I find that they may vote in Case 20-RC-17975, as to whether they wish to be represented as a unit comprised solely of RNs by the Union-Petitioner, by the Intervenor or by no union. Such a result comports with the Board's finding in its Health Care Rule that a unit of RNs is an appropriate unit in acute care hospitals.

The Intervenor's reliance on *Group Health Association*, supra, 317 NLRB 238, is misplaced. In that case, an employee sought a decertification election among approximately 42 unit employees classified as medical technologists, on the grounds that they were professional employees who had never had the opportunity to vote in a *Sonotone* election. The certified unit consisted of approximately 200 office and technical employees and specifically excluded professional employees. Although the Board found the medical technologists at issue were professional employees within the meaning of the Act, and had not been given an opportunity to vote as to their desire to be included in a unit with non professional employees, it declined to direct an election in that case. In so doing, the Board reasoned that a decertification election was not necessary to remove the professional employees from the unit because the unit description specifically excluded them. Although the intervenor in that case sought to represent the medical technologists in a separate unit, the Board found that such an election was not warranted because the record was not sufficient to enable it to make a determination as to whether a unit comprised only of medical technologists was an appropriate unit. The Board observed in this regard, that: "Mindful of Congress's admonition against the proliferation of bargaining units in the healthcare industry, . . . the record [did] not establish that the medical technologists are the only professional employees employed by the Employer. Rather, the record indicates that there may be other professional classifications which perhaps should also be included in a unit with the medical technologists."

Significantly, the Board noted at the end of this quotation that:

> This is unlike *Utah Power, supra*, 258 NLRB 1059, where the professional employees in question were the only professional employees employed by the employer and, presumably, would constitute an

> appropriate unit by themselves. We note that, here, although the Employer is not an acute care hospital (and, hence, the Board's Health Care Rules do not apply), in that context a unit of all professional employees (excluding physicians and registered nurses) would be appropriate. 29 CFR § 103, 284 NLRB 1580, 1596 (1989).

Id. at 244 n. 21. Thus, the Board's footnote in *Group Health* supports my finding herein by showing that in *Utah Power* type cases, there are three potential appropriate professional units: (1) all RNs, (2) all physicians, and (3) all professionals except for registered nurses and physicians.

Nor does *The Permanente Medical Group*, 187 NLRB 1033 (1971), support the Intervenor's position in this case. In that case, a petitioning union sought to represent a group of professional medical technologists who had been historically represented by another union. The Board found that an overall multi-plant unit of medical technologists that was coextensive with the multi-plant historical unit was an appropriate unit within which to conduct a self-determination election. In reaching this conclusion, the Board found that a self-determination election could not be held among medical technologists working at fewer than all of the clinics that had been historically represented by the incumbent union. In sum, *The Permanente Medical Group* dealt with a multi-location issue, which is unrelated to the issue disputed herein i.e., whether RNs must be included in a voting group with all other professionals under *Utah Power*. Indeed, *The Permanente Medical Center* decision is supportive of my decision herein, as I am ordering this election in a unit that is coextensive with the two-facility unit covered under the current Agreement between the Employer and the Intervenor, and which is consistent with the multi-facility nature of the historical unit.

Conclusion. I make the following findings about the voting group, election procedures and the appropriate unit in these cases. My unit determination finding is obviously based in part on the results of the election to be conducted. However, with that caveat, I make the following findings:[14]

I find that the following employees constitute the proper Voting Group: [15]

> All RNs covered by the collective-bargaining agreement between Service Employees International Union, Local 707, AFL-CIO, effective February 18, 2002 through October 31, 2004, including all full time, regular part time and per diem RNs in the following classifications: fam nurse prct (BS&MS-cont/ucp), fam nurse prct (BS&MS-cont/ucp), staff nurse I, staff nurse II, staff nurse II (BS), staff nurse II-M.S., staff nurse III employed by the Employer at Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital located in Santa Rosa, California; and excluding all other employees, guards and supervisors as defined in the Act.

If the Intervenor indicates in a timely manner[16] its desire to be included on the ballot, the election will be directed as follows:

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[14] Because the Intervenor has not indicated whether it wishes to be included on the ballot in this election, it is hereby given seven (7) days to provide notice to the Regional Office that it wishes to be placed on the ballot. In this regard, under *St Mary's Duluth*, 332 NLRB 1419 (2000), the Intervenor may be included on the ballot without a showing of interest, provided that it gives the Regional Office timely notice of its intention in this regard. *Id*. at 1422.

[15] I have not included in either the Voting Group or the unit for certification any of the new classifications that Vichon testified about (i.e., OR assistant, utilization coordinator, pharmacy inventory tech coordinator, clinical educator or maternal child discharge coordinator), because it is unclear from the record whether they are properly part of the existing unit or are required to have RN licenses. In this regard, the Voting Group and the unit for certification exclude classifications, which are not covered under the existing contractual unit. Nor am I including in the Voting Group or the unit for certification, the three classifications that were set forth in the Recognition Agreement (i.e., nursing staffing coordinator, supervising staff nurse and supervising respiratory therapist) because the evidence shows that they have been historically excluded from the unit as supervisory positions by the Intervenor and the Employer. If there are any issues concerning the unit placement of any of these classifications, or any other classifications, such issues must be raised by the parties in post-election proceedings.

[16] As indicated above, such notice must be received within seven (7) days of the issuance of this decision and direction of election.

RNs in the Voting Group will be asked: Do you desire to be included in the same unit as other employees represented by Service Employees International Union, Local 707, AFL-CIO, for the purposes of collective bargaining in the unit covered under the collective-bargaining agreement between Service Employees International Union, Local 707, AFL-CIO and Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital, effective February 18, 2002, to and including October 31, 2004; excluding guards and supervisors as defined in the Act?

If a majority of the employees in the Voting Group vote "yes," to this question, then they will continue to be represented by the Intervenor, Service Employees International Union, Local 707, AFL-CIO, as part of the existing contractual unit which covers both professional and nonprofessional employees. If, on the other hand, a majority of the RNs in the Voting Group vote "no" to this question, then, they will be severed from the existing unit.

Employees in the Voting Group will next be asked the question: Do you wish to be represented for the purpose of collective bargaining by Sutter Santa Rosa/Sutter Santa Rosa/Sutter Warrack R.N. Association or by Service Employees International Union, Local 707, AFL-CIO or not to be represented by any union in the following unit:[17]

> All full-time, regular part-time and per diem RNs, including RNs in the following classifications: fam nurse prct (BS&MS-cont/ucp), fam nurse prct (BS&MS-cont/ucp), staff nurse I, staff nurse II, staff nurse II (BS), staff nurse II-M.S., staff nurse III employed by the Employer at its Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital facilities

[17] The Voting Group and the unit for certification in the election being directed include all of the classifications identified in the record for which an RN license is required. Issues regarding any other classifications, which the parties contend should be included in the unit should be raised in post election proceedings.

> located in Santa Rosa, California; and excluding all other employees, guards and supervisors as defined in the Act.

If the RNs in the Voting Group vote to be severed from the existing unit, then their votes on this question will be counted to determine whether they will be represented by the Union-Petitioner or by the Intervenor. A certification of representative status will be issued to the union with the majority of votes in the following unit, which I find to be an appropriate unit for collective bargaining:

> All full-time, regular part-time and per diem RNs, including RNs in the following classifications: fam nurse prct (BS&MS-cont/ucp), fam nurse prct (BS&MS-cont/ucp), staff nurse I, staff nurse II, staff nurse II (BS), staff nurse II-M.S. and staff nurse III employed by the Employer at its Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital facilities located in Santa Rosa, California; and excluding all other employees, guards and supervisors as defined in the Act.

If the Intervenor refuses to be included on the ballot, then the employees in the Voting Group will nevertheless be asked the same question as set forth above regarding whether they desire to continue to be represented by the Intervenor in the existing contractual unit, and if a majority of the RNs in the Voting Group vote "yes," to that question, they will continue to be represented by the Intervenor in that unit. However, if they vote "no" to this question, they will be asked, whether they desire to be represented for purposes of collective bargaining by the Union-Petitioner, that is, Sutter Santa Rosa/Sutter Warrack R.N. Association, or do not wish to be represented by any union in the following unit:

> All full-time, regular part-time and per diem RNs, including RNs in the following classifications: fam nurse prct (BS&MS-cont/ucp), fam nurse prct (BS&MS-cont/ucp), staff nurse I, staff nurse II, staff nurse II (BS), staff nurse II-M.S. and staff nurse III employed by the Employer at its Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital facilities

> located in Santa Rosa, California; and excluding all other employees, guards and supervisors as defined in the Act.

If a majority of the Voting Group votes to be represented by the Sutter Santa Rosa/Sutter Warrack R.N. Association, then I will issue a certification to the Union-Petitioner in the following unit, which I find to be an appropriate unit for collective bargaining purposes:

> All full-time, regular part-time and per diem RNs, including RNs in the following classifications: fam nurse prct (BS&MS-cont/ucp), fam nurse prct (BS&MS-cont/ucp), staff nurse I, staff nurse II, staff nurse II (BS), staff nurse II-M.S. and staff nurse III employed by the Employer at its Sutter Medical Center of Santa Rosa and Sutter Warrack Hospital facilities located in Santa Rosa, California; and excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordan Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before September 23, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by September 30, 2004.

Dated at San Francisco, California, this 16th day of September, 2004.

/s/ Joseph P. Norelli

Joseph P. Norelli, Acting Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735